

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

BC
FCC 82-1
30680

In the Matter of)
)
Amendment of Section 73.593 of the) BC Docket No. 82-1
Commission's Rules.)

NOTICE OF PROPOSED RULE MAKING

Adopted: January 5, 1982 ; Released: January 11, 1982

By the Commission:

1. The Commission has before it the provisions of Section 73.593 of the Commission's Rules which impose restrictions on the use of a Subsidiary Communications Authorization ("SCA") granted to noncommercial educational FM stations, now called public broadcasting stations. Recent amendments to the Communications Act 1/ have called upon educational stations to provide more of their own funding. As discussed below, this raises the question whether the current restriction on SCA use should be continued.

2. In addition to the regular broadcast service offered on the main carrier (channel), FM stations have the capacity to program one or more subcarriers 2/ on a multiplex basis to provide SCA service. 3/ Upon grant of the necessary application, both commercial and public broadcast FM stations are permitted to provide SCA service. Unlike the commercial station, the public broadcasting can only transmit programs of a noncommercial nature which are in furtherance of an educational purpose.

3. The placement of restrictions on the use of an SCA by a public broadcasting station reflects the then prevailing view about the nature of these stations as well as the expectation that they would have adequate funding from outside sources. Recently, the situation has changed. Federal funding, once a major source, has been greatly curtailed. Recognizing the consequences of dwindling Federal funding, the Congress acted to let these stations do more to help themselves. In fact, one of the main purposes of the

1/ Public Law 97-35 (Public Broadcasting Amendment Act of 1981).

2/ One such subcarrier is necessary to carry the second signal if the station operates in stereo.

3/ SCA's can be used for a variety of broadcast-like services. It is frequently used by commercial stations for background music in stores and offices. Public broadcasting stations are not now permitted to use it for such commercial purposes.

Public Broadcasting Amendments Act of 1981 was to help these broadcasters develop such other funding. To this end, the bill (Public Law 97-35) contained (in new Section 399B) provisions allowing public broadcast stations to engage in offering services, facilities or products for remuneration. This provision allows these educational licensees to engage in a variety of remunerative non-broadcast activities.

4. Examination of the new public broadcasting provisions and the Reports and debates which accompany them suggest that it may be inappropriate to continue the restriction on licensees of public radio stations that limits these SCA's to educational purposes and prevents these stations from using their subcarrier SCA capacity for remunerative purposes. In fact, an argument can be made that the current restriction is inconsistent with the new Section 399B. Therefore, we are proposing to consider deletion of the current restriction. With this deletion, commercial and noncommercial educational stations would stand on the same footing in regard to the basis on which they could obtain an SCA and the uses to which it could be put. 4/

5. Regulatory Flexibility Analysis:

I. Reason for action:

Use of the SCA in the fashion proposed could help educational FM stations be self-supporting and could lead to more efficient use of their subcarrier frequencies, which now sometimes lie fallow.

II. The objective:

The Commission proposes to allow educational FM stations to employ SCA's for the same purposes now permitted commercial FM stations.

III. Legal basis:

The action proposed would explore new and improved uses of radio and thus would be in furtherance of Sections 303(g) and 399B of the Communications Act of 1934, as amended.

IV. Description, potential impact and number of small entities affected:

The proposed removal of the restriction on SCA uses by public broadcasting stations could be expected to enhance the ability of these stations to generate revenues and be more self-supporting. This, in turn,

4/ Recently, the Commission adopted a change in permissible use of the commercial station SCA to authorize non-broadcast transmissions for utility load management. Thus, the proposed rule change treating commercial and public broadcasting FM stations on the same footing would permit this use for educational stations as well.

could provide opportunities to enhance competition and increase the availability of SCA services in a community. The rule change, if adopted, would directly affect the almost 1,200 public broadcasting FM stations and indirectly affect the more than 3,500 commercial FM stations which do not now receive competition from public broadcasting station SCA's run on a commercial basis. It is also possible that such a step could have an impact on small governmental or business entities which would gain access to SCA services for the first time. Finally, small entities involved in supplying equipment or services connected with constructing or conducting SCA operations could be affected as such opportunities increased.

V. Recording, record keeping and other compliance requirements:
None.

VI. Federal rules which overlap, duplicate or conflict with this rule: None.

VII. Any significant alternative minimizing impact on small entities and consistent with stated objective:

The only alternative would be to maintain the status quo and thereby continue to preclude expanded SCA uses by public broadcasting FM stations.

6. Accordingly, IT IS PROPOSED, That pursuant to the provisions of Sections 4(i), 303(b), (g) and 399B of the Communications Act of 1934, as amended, Section 73.593 of the Commission's Rules be amended to read as follows:

73.593 Subsidiary Communications Authorizations. The provisions governing SCA authorizations set forth in Section 73.293 are applicable to noncommercial educational FM stations.

7. Authority for the institution of this proceeding is contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended.

8. Pursuant to procedures set forth in Section 1.415 of the Commission's Rules, interested persons may file comments on or before February 11, 1982, and reply comments on or before February 26, 1982. The Commission will consider all relevant and timely comments and may also consider other relevant information before it before taking further action in this proceeding.

9. In accordance with the provisions of Section 1.419 of the Commission's Rules, an original and five copies of all comments, replies, briefs, and other documents shall be furnished the Commission. Further, members of the general public who wish to participate informally in the proceeding may submit one copy of their comments, specifying the docket number in the heading. All filings in this proceeding will be available for examination by interested persons during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C. 20554.

10. For further information concerning this proceeding, contact Jonathan David, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts presented to the Commission in proceedings such as this one will be disclosed in the public docket file.

11. An ex parte contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentations requested by the Commission. If a member of the public does wish to comment on the merits of this proceeding in this manner, he or she should follow the Commission's procedures governing ex parte contacts in informal rule making. A summary of these procedures is available from the Commission's Consumer Assistance Office, Federal Communications Commission, Washington, D.C. 20554, (202) 632-7000.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico
Secretary